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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/341,048	08/09/1999	NAPHTALI SAVION	0744/077	4662

27557 7590 09/23/2004

BLANK ROME LLP
600 NEW HAMPSHIRE AVENUE, N.W.
WASHINGTON, DC 20037

EXAMINER

FAY, ZOHREH A

ART UNIT	PAPER NUMBER
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1614

DATE MAILED: 09/23/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/341,048

Applicant(s)

SAVION ET AL.

Examiner

Zohreh Fay

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 108,109,112,113,115-130 and 132 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 108,109 and 116 is/are rejected.
- 7) ☒ Claim(s) 112, 113, 115, 117-130 and 132 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|--|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____ | 6) <input type="checkbox"/> Other: ____ |

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Claims 108, 109, 112, 113 ¹³² ~~and~~ ^{and} 115-130 are presented for examination.

The amendments and remarks filed on June 21, 2004 have been received and entered.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 108, 109 and 116 rejected under 35 U.S.C. 103(a) as being unpatentable over WO 91/12808. The WO patent teaches the use of phospholipid in a pharmaceutical formulation as a tear substitute, agents for treating dry eye, a lubricant for intra-ocular lenses in post cataract surgery and for the treatment of conjunctivitis and inflammatory conditions of the eye. See the abstract and page 3, lines 3-10. The above reference differs from the claimed invention in the different causes for corneal epithelial defect. It would have been obvious to a person skilled in the art to employ the claimed phospholipid for the treatment of damage to corneal epithelial caused by any source, considering the protective and lubricating activity of such agent is taught by the prior art. One skilled in the art would have been motivated to employ the teachings of the above reference, since it relates to the use of phospholipid as a lubricating agent used for the treatment of conditions such as dry eye or wearing a contact lens which causes abrasion and damage to corneal epithelial. To use a well known ophthalmic lubricating agent for the protection and treatment of damage to corneal epithelial caused by any reason is considered to be within the skill of artisan in the absence of evidence to the contrary. Applicant has presented no evidence to establish the unexpected or

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unobvious nature of the claimed invention, and as such, claims 108, 109 and 116 are properly rejected under 35 U.S.C. 103.

Claims 112, 113, 115, 117-130 and 132 are objected to as being dependent on a rejected claim.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Zohreh Fay whose telephone number is (571) 272-0573. The examiner can normally be reached on 9:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christopher Low can be reached on (571) 272-0951. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Z.F

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Edmund F.